

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 26, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Schmidt  
Ray Dwyer

**BOARD MEMBERS ABSENT:** Walter Tarmann

**SECRETARY TO THE BOARD:** Mary Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Sheri Mount, Senior Land Use Specialist  
Luis Hernandez and Marilee McGovern Hernandez, BA06:026, petitioners  
Keith and Joyce Henson, BA06:026, petitioners  
Mike Fenske, BA06:026, neighbor  
Peter and Kathy Malanche, BA06:028, petitioners  
Jerry and Cindy Larke, BA06:029, petitioners  
Jim Barteleme, BA06:029, builder  
Jon Spheeris, BA06:029, neighbor and representative from the Saddlebrook Farms Homeowners Association  
Jon Bromaghim, BA06:030, petitioner  
Dennis Cauley, BA06:030, neighbor  
Keric and Gloriann Dechant, BA06:021, petitioners  
Perry Spzek, JDJ Builders, Inc., BA06:021, builder  
Jim and Linda Schneider, BA06:021, neighbors  
Jerry and Judith Heine, BA06:027, petitioners  
Mark King, BA06:027, neighbor  
Bill Nack, BA06:027, North Lake property owner  
Christopher Dix, BA06:021 and BA06:027, representing the North Lake Yacht Club  
Joseph and Susan Pecor, BA04:026, petitioners  
Mr. and Mrs. Dennis Becker, BA05:097, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I make a motion to approve the Summary of the Meeting of April 12, 2006.*

The motion was seconded by Mr. Ward and carried with four yes votes. Mr. Schmidt abstained because he was not present at the meeting of April 12, 2006.

**NEW BUSINESS:**

**BA06:026 LUIS HERNANDEZ (Current Owner) and KEITH HENSON (Former Owner)**

Mr. Schmidt

*I move that the petitioners' request for after-the fact variances be granted on the basis that a unique situation on the property lends itself to a deck of that size and the deck serves a purpose that meets a use, as envisioned by the Statutes, that does not adversely impact the environment or adversely impact the neighbors. The deck shall be permitted to be retained as built, with the understanding that there shall be no additional coverage of the patio.*

The motion was seconded by Mr. Schultz and approved with three yes votes from Mr. Bartholomew, Mr. Schultz and Mr. Schmidt. Mr. Ward and Mr. Dwyer voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variance will not prevent the property from being used for the permitted purpose of single-family residential use and would not be unnecessarily burdensome, since the deck could be re-configured to conform with the shore and floodplain setback requirements and still provide an exit from the patio door on the main level of the residence. Although the current owner was not the owner of the property at the time the deck was constructed, that does not change the fact that this is a self-created hardship. Self-created hardships cannot be used to justify the granting of variances. Further, although re-configuring the deck to bring it into conformance with the shore and floodplain setback requirements may be a financial hardship, financial hardships also cannot be used to justify the granting of variances. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA06:028 PETER MALANCHE**

Mr. Dwyer

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew. Mr. Schultz and Mr. Dwyer voted to approve the motion. Mr. Ward, Mr. Bartholomew, and Mr. Schmidt voted no. The motion was defeated.

Mr. Schmidt

*I make a motion to deny the request for a variance to remodel a non-conforming structure in excess of 50% of its fair market value and for variances from the offset, floodplain setback, floor area ratio, and open space requirements to permit the construction of a living room addition on the north side of the residence and to permit the construction of an attached garage and breezeway addition on the west side of the residence, but approve road setback, floodplain setback, offset, floor area ratio, and open space variances to permit the detached garage to be rebuilt on the same footprint as the existing garage, subject to the following conditions:*

- 1. The new detached garage must be located on the same footprint as the existing detached garage, which would be 5.3 ft. from the west lot line, as measured to the outer edge of the wall. The overhang of the new garage shall not exceed two (2) ft. in width.*
- 2. The new detached garage may be no larger than 484 sq. ft., which will permit reconstruction of the 22 ft. x 22 ft. detached garage on the existing footprint.*
- 3. Prior to the issuance of a Zoning Permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*
- 4. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. That Plat of Survey shall also show the floodplain setback of the detached garage.*
- 5. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.*
- 6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative*

*plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

7. *A firewall sufficient to met the one-hour fire rating contained in the building code must be installed in that portion of the new detached garage located within 10 ft. of the residence.*

*With respect to the proposed living room addition and the proposed breezeway addition, it has not been demonstrated that denial of the requested variances would create any undue hardship. However, with respect to the garage, denial of the ability to rebuild the existing garage on its current footprint would be a hardship because of the uniqueness of the property. A new detached garage constructed on the same footprint as the existing detached garage would not change any environmental conditions, it would not be displeasing to the neighbors, and it would meet the spirit and intent of the Ordinance.*

The motion was defeated due to the lack of a second.

Mr. Bartholomew

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried with three yes votes from Mr. Schultz, Mr. Bartholomew, and Mr. Dwyer. Mr. Ward and Mr. Schmidt voted no.

The staff's recommendation was for denial of the request for variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the offset, floodplain setback, floor area ratio, and open space requirements to permit the construction of a living room addition on the north side of the residence and denial of the request for an offset variance to permit the construction of an attached garage and breezeway addition on the west side of the residence, but approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback, floodplain setback, floor area ratio, and open space requirements to permit replacement of the existing detached garage with an attached garage, with the following conditions:

1. The attached garage must be located at least 11.33 ft. from the west lot line, as measured to the outer edge of the wall, with an overhang not to exceed two (2) ft. in width. This will be in conformance with the minimum offset requirement and still permit a garage approximately 24 ft. wide.
2. The attached garage must be at least 30 ft. from the edge of the 50 ft. wide platted road right-of-way of Jack's Bay Rd. (55 ft. from the centerline of the road right-of-way), as measured to the outer edge of the wall, with an overhang not to exceed two (2) ft. in width.
3. The attached garage may be no larger than 630 sq. ft., which will permit the construction of an attached garage 24 ft. wide and with the same depth as the residence (26.2 ft.) and result in a maximum floor area of approximately 2,525 sq. ft. and a floor area ratio of approximately 22.3%.

4. Prior to the issuance of a Zoning Permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed attached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. That Plat of Survey shall also show the floodplain setback of the proposed attached garage.
6. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the attached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested variances to permit the proposed living room addition or denial of the requested offset variance to permit the proposed attached garage and breezeway addition would be an unnecessary hardship. Denial of those variances will not prevent the property from being used for the permitted purpose of single-family residential use. Denial of the requested offset variance for the proposed attached garage and breezeway addition will not prevent replacement of the deteriorated detached garage, since a two-car attached garage could be constructed in conformance with the offset requirement. Therefore, the approval of those requested variances would not be in conformance with the purpose and intent of the Ordinance.

Some relief from the Ordinance requirements is necessary to permit replacement of the deteriorated detached garage. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and the requested variances for the attached garage and breezeway addition exceed minimum relief. The approval of variances, as recommended, will permit the deteriorated detached garage and screen porch to be replaced by a two-car attached garage that will not create a safety hazard or be contrary to the public interest. Therefore, the approval of variances to remodel a non-conforming structure in excess of 50% of

its fair market value and from the road setback, floodplain setback, floor area ratio, and open space requirements to permit replacement of the existing detached garage with an attached garage, subject to the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA06:029 JERRY AND CINDY LARKE**

Mr. Ward

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following changes:*

*Condition No. 1 shall be changed to read "The detached garage can be constructed with an exposed lower level in the back and an upper-level storage area, as proposed, but the height of the detached garage, as measured from the first floor on the road side to the peak of the roof, may not exceed 27 ft. The height of the detached garage shall be reduced to less than 27 ft., if that can result in a detached garage with similar architecture to the house."*

*Condition No. 7 shall be added to read "Prior to the issuance of a Zoning Permit, a Declaration of Restrictions, stating that no portion of the detached garage may be used as living quarters and the detached garage may not contain a bathroom or any other plumbing fixtures, shall be signed by the owners and recorded in the Waukesha County Register of Deeds office."*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of the requested building height variance to permit the construction of the proposed detached garage, but approval of a building height variance to permit the construction of a modified version of the proposed garage, with the following conditions:

1. The detached garage can be constructed with an exposed lower level in the back and an upper-level storage area, as proposed, but the height of the of the detached garage, as measured from the first floor on the road side to the peak of the roof, may not exceed 18 ft.
2. The detached garage may not contain a bathroom.
3. Prior to the issuance of a Zoning Permit, a complete set of plans for the garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. The detached garage must be located at least 30 ft. from the side lot line and at least 10 ft. from the residence and attached garage, as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width.
5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed detached garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the detached garage does not result in adverse drainage onto the adjacent property. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested building height variance would be an unnecessary hardship. Therefore, the approval of the requested building height variance would not be in conformance with the purpose and intent of the Ordinance.

Due to the topography of the lot, a detached garage constructed in the proposed location, which is the only practical location for a detached garage, must be constructed with an exposed lower level. It would be unnecessarily burdensome not to grant some relief from the building height requirement so that the exposed lower level of the garage does not have to be included in the maximum permitted building height, since the exposed lower level is dictated by the existing topography. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and the requested variance to permit the proposed garage with a height of 38 ft. exceeds minimum relief. The approval of a building height variance to allow the construction of a detached garage with a maximum height of 18 ft., as measured from the first floor on the road side to the peak of the roof, as recommended, is in conformance with the maximum permitted accessory building height, for a garage without an exposed lower level, in the R-1, R-2, or R-3 Residential Districts and it will allow the construction of a garage that will be architecturally compatible with the existing residence and not contrary to the public interest. Therefore, the approval of an accessory building height variance, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA06:030 JON BROMAGHIM**

Mr. Schmidt

*I move to adopt the recommendation of the staff to deny the request, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes from Mr. Bartholomew, Mr. Schultz, Mr. Schmidt, and Mr. Dwyer. Mr. Ward voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variance will not prevent the property from being used for the permitted purpose of single-family residential use and would not be unnecessarily burdensome, since the property already contains a three-bedroom residence and a detached garage. Further, the maximum permitted floor area ratio has already been exceeded by the existing residence and detached garage and while the petitioner may desire a larger residence, a larger residence is not necessary for a reasonable use of the property. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA06:021 JDJ BUILDERS, INC. (Petitioner) KERIC DECHANT (Owner)**

Mr. Schmidt

*I make a motion to adjourn this hearing until the meeting of May 10, 2006, to allow time for the staff to obtain a legal opinion from the Corporation Counsel's office. The legal opinion shall address whether the Board is authorized to grant a variance to allow the detached garage located within the 100-year floodplain to be remodeled without requiring the floor of the detached garage to be elevated to at least one (1) ft above the 100-year flood elevation. The legal opinion shall also address the question of what type of repairs or alterations can be made to the garage before it must be required to be elevated to at least one (1) ft. above the 100-year flood elevation. Specifically, the Board is interested in whether the garage would be required to be elevated at least one (1) ft. above the 100-year flood elevation if the roof pitch is not increased.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. No changes to the existing footprint of the garage are permitted.
2. The floor of the detached garage shall be at least one (1) foot above the floodplain elevation of North Lake.
3. There shall be dry land access to the detached garage per Section 8(2)(A)(iii) of the Waukesha County Shoreland and Floodland Ordinance, if applicable, or a waiver must be obtained from the Town of Merton.
4. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the



issuance of a zoning permit. This is to ensure the remodeling of the garage and associated fill does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The northeast, southeast, and northwest sides of the garage shall remain exposed and no fill shall be added to those sides of the garage to minimize the impact on the adjacent property. The exposed portion of the garage walls should be covered with decorative block, stone or siding. It should be noted that retaining walls, if necessary, may be permitted to minimize the displacement of floodwater by fill.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the petitioner to repair and remodel the existing detached garage on the property. The residence does not contain a basement and some storage area is needed. Due to the configuration of the lot, the owner would not be able to construct a new detached garage in a more conforming location without the need for variances. There is an existing tree line between the detached garage and the neighboring property to the northeast, screening it from view from the neighboring property. The approval of this request would not be contrary to the public interest and therefore would be in conformance with the purpose and intent of the Ordinance.

#### **BA06:027 JERRY AND JUDITH HEINE**

**Note: Mr. Schultz excused himself from the Board of Adjustment meeting prior to discussing the decision in this case because he was the architect for the project. He was not in the boardroom during the deliberation portion of the meeting.**

Mr. Dwyer

*I move to deny a floor area ratio variance, but approve variances from the floodplain setback and to allow a lateral expansion into the floodplain in the C-1 (EFD) District, to permit the construction of a new single-family residence, with an attached garage, deck, and patio, subject to the conditions recommended by the staff, as stated in the Staff Report, with the following changes.*

*Condition No. 3 shall be changed to read "The total building footprint must be no larger than shown on the plans submitted with the application. This will permit a building footprint, including the first floor of the new residence, the attached garage, and any covered or enclosed porches or patios on the first floor, of approximately 3,971 sq. ft."*

*Condition No. 5 shall be changed to read "The new residence must be no more than two (2) stories when viewed from the lake."*

*The property is large enough to support taking this area out of the floodplain. The new residence and detached garage would conform with all locational and size requirements of the Ordinance, with the exception of floodplain setback. If the property, which was more than two legal lots of record, were to be developed with two single-family residences, they would have a larger footprint than the proposed residence and attached garage. Redeveloping this property as one large lot will eliminate the possible construction of an additional house and driveway, which will limit the amount of impervious surface.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of a floor area ratio variance, but approval of variances from the floodplain setback requirement and to allow a lateral expansion in the floodplain in the C-1 (EFD) Existing Floodplain Development District, to permit the construction of a new single-family residence, with an attached garage, deck, and patio, with the following conditions:

1. Prior to the issuance of a Zoning Permit, a Sanitary Permit for a new waste disposal system must be issued by the Environmental Health Division and a copy furnished to the Planning and Zoning Division staff.
2. All existing structures must be removed from the property, no later than six months after the issuance of a Zoning Permit for a new residence.
3. The total building footprint, including the first floor of the new residence, the attached garage, and any covered or enclosed porches or patios on the first floor, must not exceed 2,100 sq. ft.
4. The first floor of the new residence must contain at least 900 sq. ft., in conformance with the minimum first floor area requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and the Town of Merton Zoning Ordinance. The total floor area of the new residence and attached garage, including any covered or enclosed porches or patios and any attic storage areas that are accessible from the residence or the garage by any means other than pull-down stairs, must not exceed 4,911 sq. ft. This will be in conformance with the maximum permitted floor area ratio of 15%.
5. The new residence must be no more than three (3) stories when viewed from the lake and its height must be no more than 46 ft., as measured from the lowest exposed point to the highest peak of the roof; no more than 36 ft., as measured from the lowest exposed point to the highest eave; and no more than 27 ft., as measured from the lowest exposed point to the highest floor line. This will be in conformance with the building height requirements set forth in the Waukesha County Shoreland and Floodland Protection Ordinance.
6. The new residence and attached garage must be located in conformance with the offset, road setback, and shore setback requirements. This will require the residence and attached garage to be at least 18.33 ft. from the side lot lines, at least 50 ft. from the road right-of-way, and at least 75 ft. from the Ordinary High Water Mark of North Lake. These dimensions are measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the

overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.

7. The first floor elevation of the new residence and the floor elevation of the attached garage must be at or above the flood protection elevation of 901.9 ft. above mean sea level (two ft. above the 100-year flood elevation).
8. The new residence may not have a full basement. If it is constructed on a crawl space, the floor of the crawl space must be at or above 899.9 ft. above mean sea level (the 100-year flood elevation).
9. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location and elevation of the proposed residence and attached garage, as well as any proposed decks or patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. The area around the residence shall be filled to an elevation of at least 900.9 ft. above mean sea level, with the fill extending at that elevation for 15 ft. beyond the structure, wherever possible. Where that is not possible, due to lot line constraints, the fill shall extend at that elevation as far as possible, without resulting in slope conditions that would adversely affect surface water drainage onto the adjacent properties. A detailed grading and drainage plan, showing existing grades and proposed grades, in conformance with this condition, must be prepared by a registered surveyor or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 10.
12. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction.
13. The property shall be filled in accordance with the approved grading plan. Upon completion of the project, an "as-built" grading plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff. If that "as-built" grading plan indicates that the property has not been filled in accordance with the approved grading plan, the grades shall be modified as necessary to bring the property into conformance with the approved grading plan.

14. If the petitioners wish to amend the FEMA Flood Hazard Map to remove the filled area of the property from the floodplain and eliminate the need for flood insurance, a copy of the “as-built” grading plan and certification of the floor and fill elevations must be submitted to FEMA, along with a request for a “Letter of Map Revision Based on Fill (LOMR-F).

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of a floor area ratio variance would be an unnecessary hardship. Therefore, the approval of a floor area ratio variance would not be in conformance with the purpose and intent of the Ordinance.

However, since almost the entire property is within the 100-year floodplain, a new residence could not be located in conformance with the floodplain setback requirement. Therefore, a hardship exists with respect to floodplain setback. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and the requested variance to permit a lateral expansion into the floodplain in the C-1 (EFD) Existing Floodplain Development District exceeds minimum relief. The approval of variances from the floodplain setback requirement and to permit a lateral expansion into the floodplain in the C-1 (EFD) Existing Floodplain Development District, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance and will permit a reasonable use of the property in the form of a new residence and attached garage, elevated above the 100-year floodplain, with conforming offsets and setbacks, and with a similar footprint to the existing structures. This is not contrary to the public interest and will result in only a slight lateral expansion into the 100-year floodplain, which will minimize the impact of the new residence on the floodplain and the lake, while still permitting a reasonable use of the property.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA04:026 JOSEPH AND SUSAN PECOR**

Mr. Ward

*I make a motion not to approve the Landscape Plan that was submitted on March 31, 2006. The Landscape Plan is not adequate and the petitioners should modify the Landscape Plan to include the type of plantings that they intent to plant, along with any alternate plantings, and also provide elevations on both sides of the house, as well as elevations of the patio and retaining walls. The proposed plantings may be indicated on the Landscape Plan by the petitioners and they are not required to hire a Landscape Architect, but the required elevations must be provided by a registered land surveyor and should include elevations of the top and bottom of the retaining walls, both sides of the house, the sidewalk on the north side of the*

*house, and the patio. The Landscape Plan with elevations shall be reviewed and approved by the Planning and Zoning Division staff, without the necessity of further review by the Board of Adjustment unless the staff feels a review by the Board of Adjustment is necessary.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

**BA05:097 DIANE HIGGINS (Owner), DENNIS BECKER (Petitioner)**

Mr. Schmidt *I move to reconsider Condition No. 6 of the variances granted on December 14, 2005, due to a discrepancy between the recommended shore setbacks as stated in the Staff Report and as shown on an Exhibit that was attached to the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Mr. Schmidt *I make a motion to amend Condition No. 6 of our decision of December 14, 2006, as recommended in the Staff Memorandum, for the reasons stated in the Staff Memorandum. All other previous conditions of approval shall remain the same.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was to amend Condition No. 6 of the approval of December 14, 2005, to read as follows:

The residence and attached garage must be a minimum of 57 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of the western shore of Tearney Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width. The residence and attached garage must adhere to the shore and floodplain setbacks to the northern shore of Tearney Lake as shown on Exhibit C (of the Staff Memorandum dated April 26, 2006), with overhangs not to exceed two (2) ft. in width.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

Waukesha County Planning staff feels that the approval to amend Condition #6 of the Board of Adjustment Decision dated December 15, 2005, as recommended, is in conformance with the purpose and intent of the original decision. Allowing the shore and floodplain setback variance from the western shore as is being requested is NOT necessary to allow reasonable use of this property.

**APPROVE THE ATTENDANCE OF BOARD OF ADJUSTMENT MEMBERS AT A ZONING BOARD OF ADJUSTMENT/APPEALS WORKSHOP:**

Mr. Ward *I make a motion to approve the attendance of Board of Adjustment members at the Zoning Board of Adjustment/Appeals Workshop*

*presented by the University of Wisconsin-Extension Center for Land Use Education to be held at the Green Lake County Courthouse on May 4, 2006.*

The motion was seconded by Mr. Schultz and carried unanimously.

**ADJOURNMENT:**

Mr. Bartholomew *I make a motion to adjourn this meeting at 11:17 p.m.*

The motion was seconded by Mr. Ward and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment